



May 23, 2018

Federal Communications Commission
445 12th Street SW
Washington, DC 20054
RE: Docket Number 02-278

Dear Commissioners:

In light of the DC Circuit Court of Appeals rejecting some of the TCPA rules established in 2015, I/my company (a political consulting firm that does both automated and live surveys) wanted to offer some suggestions to the Commission as these rules are being revised. Furthermore, I discussed my concerns/suggestions via a conference call both with Commissioner O'Reilly and Congressman Garret Graves on April 26, 2018.

- Since the 2015 FCC ruling, it does not appear that the FCC has appreciated the difference between legitimate public opinion research and commercial telemarketing calls, when in fact **the genesis of the 1991 TCPA legislation was commercial telemarketing calls**. Public opinion research, on the other hand, is political free speech protected by the First Amendment;
 - Calls of a research-oriented nature are already subject to reasonable regulations through existing Do Not Call laws at both the federal and state level which are straightforward and relatively easy to remain in compliance;
 - While cell phone calls are still permissible, the recent ruling requires that these calls be hand dialed (due to an overly strict definition of what an autodialer is). The only "benefit" of this ruling is to needlessly increase the cost of public opinion research (because live dialed calls are much more expensive than automated calls), thus putting it further out of reach for interested citizens of lesser means – given the ballooning costs of political campaigns which everyone loves to bemoan, shouldn't there be cheaper options available to the public, thanks to relatively recent technology?;
- There is an inconsistency as to how the 2015 rule has been enforced: immediately after the ruling was issued, carveouts were created for government sanctioned surveys, townhalls, and commercial speech like debt collection calls. In other words, carveouts that established preferential classes of protected speech and now (to note Commissioner Rosenworcel's concerns stated in her majority opinion) put the FCC "in the ridiculous business of policing speech." To solve this problem, the FCC either needs to create another carveout for survey calls (since these carve outs are an implicit admission by this Commission that there are reasons cell phones need to be called through automated means); otherwise, there need to be NO carveouts for any group, so that everyone can be on the same playing field;
- The 2015 ruling was too vague as to what was defined as "consent" – there needs to be a reasonable and cost-effective way for phone vendors to obtain consent (for example, an opt-in/out-out question), instead of an expensive new database of reassigned numbers that creates its own level of complexity.



It is not practical in the survey/polling world to manually obtain consent to call cell phones, when it is simpler from a time perspective to just pay the high costs for a live operator to hand dial cell phones;

- In fact, a Congressional solution was proposed in 2011 by former Congressman Lee Terry of Nebraska. He wanted to exempt informational calls (such as survey calls) while continuing the prohibition against commercial telemarketing calls. In other words, he wanted to remain consistent with the original intent of the TCPA as passed in 1991. Even though a public outcry thwarted this reasonable compromise, the fact remains that survey calls are still being made; just (to comply with the 2015 ruling) with more expensive live operators who must hand dial each number;

In summary, a well-intentioned law passed by Congress in 1991 to combat commercial telemarketing calls at a time when cell phone usage was much more expensive has not kept up with the times and changing technologies, and I would respectfully request that you develop revised rules that are fair both to phone subscribers and to survey researchers.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a final flourish.

John Couvillon

President of JMC Enterprises of Louisiana/JMC Analytics and Polling